

STATE OF MICHIGAN  
IN THE SUPREME COURT

IN RE REQUEST FOR ADVISORY OPINION  
REGARDING CONSTITUTIONALITY OF  
2011 PA 38

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Supreme Court No. 143157

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**JOINT BRIEF AMICUS CURIAE OF:**

**Michigan Bankers Association  
Michigan Chamber of Commerce  
Michigan Retailers Association**



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## STATEMENT OF BASIS OF JURISDICTION

The Michigan Constitution permits the Governor to “request the opinion of the supreme court on important questions of law upon solemn occasions as to the constitutionality of legislation after it has been enacted into law but before its effective date.” Const 1963, art 3, § 8.

On May 31, 2011, the Governor requested an advisory opinion from the Supreme Court as to 2011 Public Act 38, which was granted by order dated June 15, 2011.

This Court has jurisdiction pursuant to Const 1963, art 3, § 8 and MCR 7.301(A)(4).



## STATEMENT OF QUESTIONS PRESENTED<sup>1</sup>

- I. Whether reducing or eliminating the statutory exemption for public-pension incomes as described in MCL 206.30, as amended, impairs accrued financial benefits of a “pension plan [or] retirement system of the state [or] its political subdivisions” under Const 1963, art 9, § 24.
- II. Whether reducing or eliminating the statutory tax exemption for pension incomes, as described in MCL 206.30, as amended, impairs a contract obligation in violation of Const 1963, art 1, § 10 or the US Const, art I, § 10(1).
- III. Whether determining eligibility for income-tax exemptions on the basis of total household resources, or age and total household resources, as described in MCL 206.30(7) and (9), as amended, creates a graduated income tax in violation of Const 1963, art 9, § 7.
- IV. Whether determining eligibility for income-tax exemptions on the basis of date of birth, as described in MCL 206.30(9), as amended, violates equal protection of the law under Const 1963, art 1, § 2 or the Fourteenth Amendment of the United States Constitution.

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<sup>1</sup> By Order dated June 15, 2011, the Supreme Court directed that these questions were submitted for review and consideration.

## I. INTRODUCTION AND PROCEDURAL HISTORY

The Michigan Legislature approved major reforms to the Michigan tax law and structure through the enactment of 2011 Public Act 38 (sometimes, “2011 PA 38”). 2011 PA 38 was approved by the Governor on May 25, 2011, and filed with the Secretary of State the same date.

After the enactment of 2011 PA 38, but prior to the effective date of certain provisions, the Governor requested an advisory opinion as to four questions pertaining to the constitutionality of 2011 PA 38. On June 15, 2011, this Court granted the Governor’s request for “an advisory opinion on the constitutionality of the reduction or elimination of tax exemption for pension incomes contained in 2011 PA 38....” Four questions were submitted for review. Does 2011 PA 38: 1) impair accrued financial benefits of a pension plan of the state (Const 1963, art 9, § 24); 2) impair contractual obligations (Const 1963, art 1, § 10; US Const, art I, § 10(1)); 3) create a graduated income tax (Const 1963, art 9, § 7); or 4) violate equal protection (Const 1963, art 1, § 2; US Const, Fourteenth Amendment). In granting the Governor’s request for an advisory opinion, the Court also invited “groups interested in the determination of the questions presented” to request permission to file briefs amicus curiae “on either or both sides of the submitted questions.”

The Amici Curiae<sup>2</sup> herein share a common and active interest in the State’s economic revitalization, which unquestionably requires reformation of the current tax system. Amici Curiae’s respective members are deeply committed to legislative and policy changes that will move Michigan forward and improve the economic climate for the benefit of all the State’s

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<sup>2</sup> Amici Curiae Michigan Bankers Association, Michigan Chamber of Commerce, and Michigan Retailers Association, are collectively referred to herein as “Amici Curiae.” Amici Curiae, by separate motion, have requested leave to file this brief.

residents. Amici Curiae therefore unequivocally and collectively support the amendments to the Income Tax Act set forth in 2011 PA 38, and affirmatively request that this Court uphold the constitutionality of PA 38 with respect to each of the submitted questions.

The Michigan Chamber of Commerce (the “Chamber”) is a non-profit membership corporation that represents the interests and views of its nearly 7,000 members, who are private Michigan corporations and companies engaged in civic, professional, commercial, industrial, agricultural, and recreational enterprises. The Chamber is actively involved in the political and legislative process and regularly supports and opposes issues in furtherance of its members’ interests. The Chamber thoroughly analyzes tax issues that impact its members and fully understands and appreciates the necessity for reforming the current system for the benefit of its members and overall state economy.

The Michigan Retailers Association (“MRA”) is the largest trade association of general merchandising retailers in the State, with almost 5,000 member businesses, which own and operate more than 12,000 stores across the State. Retailers provide more than \$100 billion worth of goods and services annually to consumers in Michigan and employ 450,000 Michiganians. MRA provides aggressive legislative representation and other services to its members. Legislation can impact retailers in numerous ways, including employee benefits, minimum wages, taxes and environmental regulation, which is why the MRA has been an active participant in the political and legislative arena on behalf of its members for years. MRA has a vested interest in ensuring that Michigan has a reasonable and effective tax system in place.

The Michigan Bankers Association (“MBA”) is an association of Michigan financial institutions with over 2,300 branches located throughout the State, with combined assets of over \$200 billion. It is the mission of the MBA to advance a positive business environment for the

Michigan banking industry and to foster safe, profitable and successful banks, which in turn promote strong communities and economic activity in Michigan. The MBA represents its member banks on matters of state regulation and legislation. MBA supports reformation of Michigan's tax system as part of an overall scheme to strengthen Michigan's economy.

Amici Curiae are strongly committed to their respective members and to working collectively to revitalize Michigan's economy. These Amici recognize that it is in the best interest of all to support efforts aimed at improving the State's dire economic situation. Amici Curiae strongly contend that reformation of the current tax system is an essential component to achieving those goals and therefore fully support 2011 PA 38.

## **II. FACTS: OVERVIEW OF THE ENACTMENT OF 2011 PA 38 AND THE PERTINENT MODIFICATIONS TO THE MICHIGAN INCOME TAX**

### **A. 2011 PA 38 Was Enacted As Part Of Major Tax Reform In Michigan In An Effort To Simplify The Tax Law, Encourage Economic Growth, And Adopt A Fairer Tax Regime.**

The recent perils of Michigan's economy are well-known. Data from the United States Bureau of Labor Statistics reveals that the unemployment rate in Michigan has exceeded 6% for nearly a decade. Since December 2008, according to the United States Bureau of Labor Statistics, the unemployment rate in Michigan has been firmly planted north of 10%, reaching as high as 14.1% in August and September of 2009. During these periods, Michigan has had the dubious distinction of being one of the states leading the nation in unemployment.

Against the backdrop of high unemployment, 2011 PA 38 was enacted as part of major tax reform in Michigan. 2011 PA 38 repealed the much maligned Michigan Business Tax, 2007

PA 36, as amended (“MBT”).<sup>3</sup> During its short three year existence, the MBT proved to be burdensome, complex, and inequitable. The MBT presented numerous, and still unresolved, questions concerning its application.<sup>4</sup> While the policy goal of the MBT was to encourage economic development, the MBT has not achieved this goal. According to studies prepared by the Tax Foundation, prior to enactment of 2011 PA 38, Michigan still had one of the highest business tax burdens among the states. *See* Padgitt & Tax Foundation, *2011 State Business Tax Climate*, Tax Foundation Background Paper No. 60 (2011).

The enactment of 2011 PA 38 introduced a fair and simple tax structure to Michigan. More specifically, 2011 PA 38 adopts an income tax as the primary tax on business activity, rather than the SBT and MBT, which were highly unique tax systems that taxed business activity. In fact, 2011 PA 38 largely eliminates double taxation for business entities; 2011 PA 38 does not impose an entity-level income tax on conduit business entities, such as partnerships and S corporations.

The partial elimination of the exemption<sup>5</sup> for retirement benefits from adjusted gross income under the Michigan Individual Income Tax, 1967 PA 281, as amended, MCL 206.1, *et*

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<sup>3</sup> The MBT itself replaced the equally criticized Michigan Single Business Tax, 1975 PA 228, as amended (“SBT”). “Instead of being viewed as a tax collected by business and passed on to consumers, [the SBT] was viewed as a peculiar and unfair tax on business.” McIntyre & Pomp, *A Policy Analysis of Michigan’s Mislabeled Gross Receipts Tax*, 53 Wayne L Rev 1283, 1287 (2007).

<sup>4</sup> The uncertainty of the application of the MBT is illustrated by the lengthy Frequently Asked Questions concerning the MBT published by the Michigan Department of Treasury. Commentators also argued that aspects of the MBT faced constitutional questions. *See, e.g.,* Enge, *Dormant Commerce Clause Challenges to the Michigan Business Tax*, 87 U Det Mercy L Rev 333 (2010).

<sup>5</sup> Michigan has statutorily provided a tax exemption for some retirement benefits and, for almost all other retirement benefits, a tax deduction. For simplicity, in this brief the tax exemption and deduction are collectively referred to as a tax exemption.

*seq.*, was a central piece of the tax reform enacted as part of 2011 PA 38. The partial elimination of the exemption for retirement benefits, as enacted in 2011 PA 38, is projected to generate approximately \$224.9 Million in fiscal year 2011-12 and \$343.4 Million in fiscal year 2012-13.<sup>6</sup> Without the partial elimination of the tax exemption for retirement benefits, major tax reform legislation would be derailed and Michigan would be faced with a substantial budget shortfall which the Legislature would necessarily have to eliminate.

**B. The Economic Impact Of An Aging Michigan Population On Tax Revenue Supports The Legislature's Policy Decision To Reduce The Tax Exemption For Retirement Benefits**

Michigan's population is aging at a rapid rate. *See* Michigan Department of Treasury, *The Effects of an Aging Population on the Components of Michigan Income Tax* (2009) ("Treasury Tax Study"). The economic and tax study prepared by the Michigan Department of Treasury noted that Michigan's senior population, those individuals 65 years of age and older, will increase by 71% between 2000 and 2030. *Id.* at 1. During this same time period, the non-senior population in Michigan, being those individual under age 65, is expected to slightly decline. *Id.*

An aging population will have a major impact on Michigan tax revenue. *See* Treasury Tax Study at 2. Senior citizens as a group pay less in Michigan income tax than the younger age groups due to the number of tax exemptions specifically directed at senior citizens and the fact that they typically earn less in wages. *Id.* The Treasury Tax Study concluded that an aging population "will affect how much income tax is collected." *Id.* at 2.

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<sup>6</sup> *See* House Fiscal Agency Memorandum, *Description of Recently Enacted Personal Income Tax Changes with Taxpayer Examples* (July 8, 2011).

A major cause of the projected decline in tax revenue is the tax expenditure for the exemption of retirement benefits from taxation. *See* Treasury Tax Study at 17. The Treasury Tax Study estimated that as of 2008, the exemption for retirement benefits reduced the income tax collected by Michigan by \$600 million to \$700 million per year. *Id.* The Treasury Study concluded that “[a]s the [Michigan] population becomes older and receives pension income, this tax expenditure [of exempting retirement benefits] is expected to increase over time.” *Id.*

At the same time, Michigan has also faced rapidly rising costs for community health and human services. *See* Governor Rick Snyder, *2011 Citizen’s Guide to Michigan’s Financial Health* (2011). For fiscal year 2010, the appropriations for community health and human services represented two of the three largest areas of budget expenditures and collectively represented approximately 46.9% of the Michigan fiscal year 2010 budget. *Id.* at 8. The senior citizen population is one of the larger consumers of community health and human services. *Id.* at 4.

Michigan is faced with a perfect storm: an unusually high unemployment rate; a tax structure viewed as complicated and anti-business; an aging population; and rising costs for community health and human services. To stem the rising tide from the perfect storm, the Michigan Legislature was faced with difficult policy decisions. Based on the available economic data, the Legislature adopted a reasonable policy to not only address short-term economic problems—encouraging economic development through a revamped tax structure—but also to address long-term revenue shortfalls by reducing the tax exemption for retirement benefits. Therefore, the policy decision adopted by the Michigan Legislature to reduce the tax exemption for retirement benefits by enacting 2011 PA 38 was a rational policy decision that is based on valid economic data.

**C. 2011 PA 38 Modifies The Amount Of The Exemption  
For Retirement Benefits From Michigan Taxable  
Income Under The Michigan Income Tax Act.**

Michigan is one of only a few states that historically has allowed a generous exemption from income tax for all retirement benefits received from public pensions. Of the 41 states with income taxes, 10 states offer an income tax deduction or exemption that excludes all state and local government pension income from taxation. *See National Conference of State Legislatures, State Personal Income Taxes on Pensions & Retirement Income: Tax Year 2010* (February 2011). The Michigan income tax exemption, as enacted in 1969, originally extended only to the receipt of retirement benefits paid under a state or local retirement plan. *See* 1969 PA 332. The exemption for retirement benefits paid under a state or local pension plan resulted in the entire amount of pension benefits received being excluded from Michigan taxable income.

*Davis v Michigan Dep't of Treasury*, 489 US 803, 817 (1989), required, by virtue of the intergovernmental tax immunity doctrine, retirement benefits received by retired federal employees to be afforded the same tax treatment as retirement benefits received by Michigan public employees. In response to *Davis*, the Michigan Legislature expanded the tax exemption for retirement benefits to include retirement benefits paid to retired federal employees. *See* MCL 206.30(1)(f)(i). The Supreme Court had instructed the State to either expand the exemption to include federal employees or, alternatively, withdraw the exemptions altogether, at least implicitly suggesting that the exemptions here at issue are lawful.

In an effort to provide some equality to the treatment of the taxation of retirement benefits from private pension plans, in 1974, the Michigan Legislature expanded the exemption



for retirement benefits to include benefits paid from private sector pension plans.<sup>7</sup> See 1974 PA 217. Section 30(1)(f)(iv) of the Michigan Income Tax Act, MCL 206.30(1)(f)(iv), was most recently amended in 2007 to increase the partial exemption. See 2007 PA 154. The 2007 amendment allows retirement benefits received under all other pension plans to be deducted up to a maximum amount, determined each year by the percentage increase in the Consumer Price Index (“CPI”). See MCL 206.30(1)(f)(iv). For the 2010 tax year, the maximum exemption was equal to \$45,120 for a person filing a single return and \$90,240 for a joint return.

In addition to the exemption for retirement benefits set forth in Section 30(1)(f) of the Michigan Income Tax Act, four of the acts establishing public retirement systems contained language excluding retirement benefits from taxation.<sup>8</sup> These four public retirement systems are (1) the State Employees Retirement Act, 1943 PA 240, as amended, (“SERA”), (2) Public

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<sup>7</sup> The Michigan Income Tax Act, immediately prior to amendment by 2011 PA 38, allowed a broad class of retirement benefits to be deducted from federal adjusted gross income to arrive at Michigan “taxable income.” See MCL 206.30(1)(e) and (f). Specifically, the exemptions included: (1) retirement benefits received from services in the armed forces of the United States, see MCL 206.30(1)(e); (2) retirement or pension benefits received from a federal public retirement system or from a public retirement system of or created by this state or a political subdivision of this state, see MCL 206.30(1)(f)(i); (3) retirement or pension benefits received from a public retirement system of or created by another state or any of its political subdivisions if the income tax laws of the other state permit a similar deduction or exemption or reciprocal deduction or exemption of a retirement or pension benefit received from a public retirement system of or created by this state or any political subdivision of this state, see MCL 206.30(1)(f)(ii); (4) social security benefits, as defined in Section 86 of the Internal Revenue Code of 1986, as amended, see MCL 206.30(1)(f)(iii); and (5) any other retirement or pension system or benefits from a retirement annuity policy in which payments are made for life to a senior citizen, up to a maximum of \$45,120.00 for a single return or \$90,240.00 for a joint return, see MCL 206.30(1)(f)(iv), as adjusted by the Consumer Price Index.

<sup>8</sup> Other acts which establish public pension plans for specific classes of state employees do not have express tax exemption provisions. Therefore, retirees receiving benefits under these other public pension plans, such as the Judges’ Retirement Act, must rely on the tax exemption of MCL 206.30(1)(f)(i) to exclude retirement benefits from Michigan income tax.

School Employees Retirement Act of 1979, 1980 PA 300, as amended, (“PSERA”), (3) the Michigan Legislative Retirement System Act, 1957 PA 261, as amended, (“MLRS”), and (4) City Library Employees’ Retirement System Act, 1927 PA 339, as amended, (“CLERSA”). For example, SERA provides:

The right of a person to a pension, an annuity, a retirement allowance, and any optional benefit and any other right accrued or accruing to any person under the provisions of this act, the various funds created by this act, and all money and investments and income of the funds *are exempt from any state, county, municipal, or other local tax.* MCL 38.40(1) (emphasis added).

PSERA, MLRS and CLERSA contain similar language.

Currently, all social security income, all public pension income, and most private pension income is deductible from state income tax. Beginning in tax year 2012, with the effectiveness of PA 38, tax treatment of retirement income will vary dependent on the age of the taxpayer. The tax exemptions in SERA, PSERA, MLRS, and CLERSA were also amended to expressly provide that benefits paid under the respective public retirement systems are “subject to state tax upon distribution to the person....” 2011 PA 41 (SERA); *see also* 2011 PA 42 (PSERA); 2011 PA 43 (MLRS); and 2011 PA 44 (CLERSA).

The following is a brief explanation of the existing treatment of retirement income compared to what is contemplated by 2011 PA 38.

**Current Law**

- Social security and public pensions are deductible
- Private pensions are deductible up to \$45,120 single/\$90,240 joint
- 401(k)s with no employer match are subject to tax; 401(k)s with employer match are partially deductible

### **Treatment under PA 38 (tax year 2012)**

#### **Age 67 or older in 2012 (born before 1946):**

- No change

#### **Between 60-66 years old in 2012 (born between 1946 and 1952):**

- Exemption of \$20,000 single/\$40,000 joint against pension and retirement income
- Social security deduction and eligible for personal exemption
- If Total Household Resources ("THR")<sup>9</sup> exceed \$75,000 single/\$150,000 joint, cannot take \$20,000/\$40,000 joint exemption

#### **Upon turning 67...**

- Exemption of \$20,000 single/\$40,000 joint against all types of income
- Social security deduction and eligible for personal exemption
- If THR exceeds \$75,000 single/\$150,000 joint, cannot take \$20,000 single/\$40,000 joint exemption

#### **If under 60 years old in 2012 (born after 1952):**

- No pension or retirement exemption under 67 years of age
- Social security deduction and eligible for personal exemption

#### **Upon turning 67:**

- Exemption of either (1) \$20,000 single/\$40,000 joint against all types of income or (2) social security deduction and personal exemption if it would reduce tax liability
- If THR exceeds \$75,000 single/\$150,000 joint; cannot take \$20,000 single/\$40,000 joint exemption

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<sup>9</sup> THR includes all income (taxable and nontaxable), plus certain deductible losses, received during a taxable year by a husband and wife while members of the same household.

### III. STANDARD OF REVIEW

#### A. Standard of Review

Although a standard of review is required by the court rules,<sup>10</sup> a standard of review is inapplicable in the context of this advisory opinion. Questions of constitutional interpretation are reviewed de novo. *Toll Northville LTD v Township of Northville*, 480 Mich 6, 10-11; 743 NW2d 902 (2008).

#### B. Applicable Principles Of Constitutional Interpretation

The questions presented in this proceeding raise the issue of whether 2011 PA 38 violates the Michigan Constitution of 1963 or the United States Constitution. The principles of constitutional interpretation are well established. Review of the constitutionality of 2011 PA 38 is guided by the rule “that legislation is “clothed with the presumption of constitutionality” and must be sustained if within constitutional limits.” *Request for Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich 93, 106; 422 NW2d 186 (1988) (quoting *W A Foote Mem Hosp v Jackson Hosp Auth*, 390 Mich 193, 209; 211 NW2d 649 (1973)). The presumption of constitutionality “is particularly strong when addressing tax legislation.” *Taxpayers United for the Mich Const, Inc v City of Detroit*, 196 Mich App 463, 466-67; 493 NW2d 463 (1992). “[I]t is ... well established that a taxpayer does not have a vested right in a tax statute or in the continuance of any tax law.”<sup>11</sup> *City of Detroit v Walker*, 445 Mich 682, 703; 520 NW2d 135

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<sup>10</sup> MCR 7.306(A); MCR 7.212(C)(7).

<sup>11</sup> Similarly, in the context of federal tax law, the United States Supreme Court has recognized that “reliance [upon tax laws] is insufficient to establish a constitutional

(1994). “[T]hose arguing against the constitutionality of a [Public Act] must bear the burden of proof.” *Request for Advisory Opinion on Constitutionality of 1986 PA 281*, 430 Mich at 107. Accordingly, 2011 PA 38 is presumed to be constitutional and those opposing its constitutionality must bear the burden of proof to establish otherwise.

#### IV. ARGUMENT

A. **Question 1: Whether Reducing Or Eliminating The Statutory Exemption For Public-Pension Incomes As Described In MCL 206.30, As Amended, Impairs Accrued Financial Benefits Of A “Pension Plan [or] Retirement System of the State [or] its Political Subdivisions” under Const 1963, Art 9, § 24?**

The first question submitted is whether reducing or eliminating a statutory tax exemption impairs “accrued financial benefits” of a pension plan or retirement system of the State of Michigan or its political subdivisions under Const 1963, art 9, § 24, which provides:

The accrued financial benefits of each pension plan and retirement system of the state and its political subdivisions shall be a contractual obligation thereof which shall not be diminished or impaired thereby.

Financial benefits arising on account of service rendered in each fiscal year shall be funded during that year and such funding shall not be used for financing unfunded accrued liabilities.

1. **A Tax Exemption Is Not An “Accrued Financial Benefit” For Purposes Of Const 1963, Art 9, § 24**

This Court in *Studier v Michigan Pub School Employees’ Retirement Bd*, 472 Mich 642; 698 NW2d 350 (2005) has already construed the meaning of “accrued financial benefits” for purposes of Const 1963, art 9, § 24. *Studier* is, alone, dispositive of the first question presented

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violation. Tax legislation is not a promise, and a taxpayer has no vested right in [federal tax statutes].” *United States v Carlton*, 512 US 26, 33 (1994).

in this case. This Court concluded in *Studier* that the words “accrued financial benefits” are unambiguous as used in Const 1963, art 9, § 24. 472 Mich at 653. Therefore, the Court must look to the plain and ordinary meaning of these words as used in the text of Const 1963, art 9, § 24. *Id.* *Studier* found that the term “accrued financial benefits” consists of two elements: (1) monetary payments; (2) that grow over time. A tax exemption for pension income encompasses neither of these required elements.

In identifying the two elements of “accrued financial benefits,” *Studier* first concluded that the common meaning of the term “‘accrued’ benefits” is understood “to be benefits of the type that increase or grow over time – such as a pension payment or retirement allowance that increases in amount along with the number of years of service a public school employee has completed.” 472 Mich at 654. “Financial benefits” mean monetary payments. *Id.* at 655. “The ratifiers of our Constitution would have commonly understood ‘financial’ benefits to include only those benefits that *consist of monetary payments*, and not benefits of a monetary nature such as health care benefits.” *Id.* (emphasis added). Thus, “the phrase ‘accrued financial benefits,’” is a phrase understood by the ratifiers “to be one of limitation that would restrict the scope of protection provided by *art 9, § 24* to monetary payment for past services.” *Id.* at 658. At issue in *Studier* was whether health care benefits are “accrued financial benefits” for purposes of the Michigan Constitution. Applying this common and ordinary meaning, this Court held that health care benefits were not “accrued financial benefits” because the benefits were not monetary benefits that grow over time.

While the constitutional convention debates are not decisive as to the intent of the ratifiers, the debate involving art 9, § 24 is illuminating by emphasizing that “accrued financial benefits” were intended to represent deferred compensation paid to state employees. This is

relevant because deferred compensation represents a monetary payment for services rendered. Delegate Van Dusen, in two instances, stated that the concept of accrued benefits as used in art 9, § 24 “was simply designed to put pension benefits earned in public service on the same basis as deferred compensation earned in private employment.” 1 Official Record, Constitutional Convention 1961, p 773. Delegate Van Dusen later clarified:

that the words ‘accrued financial benefits’ were used designedly, so that the contractual right of the employee would be limited to the deferred compensation embodied in any pension plan, and that we hope to avoid thereby a proliferation of litigation by individual participants in retirement systems talking about the general benefits structure, or something other than his specific right to receive benefits. [1 Official Record, Constitutional Convention 1961, pp 773-74.]

*Studier* establishes that a tax exemption cannot be an “accrued financial benefit” for purposes of Const 1963, art 9, § 24 for two reasons:

First, a “financial benefit” means a monetary payment. *See Studier*, 472 Mich at 655. A tax exemption is not a monetary payment. A tax exemption is not a monetary payment because a taxpayer cannot directly monetize the value of the tax exemption. Rather, an exemption simply reduces “taxable income.” “Taxable income,” in turn, is the figure by which the applicable tax rate is multiplied to arrive at the tax liability. In other words, the full amount of the tax exemption does not translate into a dollar-for-dollar reduction of the taxpayer’s ultimate tax liability. The actual dollar value of an exemption is only a portion of that amount equal to the exemption multiplied by the applicable tax rate.

Second, a tax exemption does not grow over time.<sup>12</sup> Its effect is limited to a single tax year, when retirement benefits are paid, not when the services are performed. Accordingly, a tax

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<sup>12</sup> The ultimate resolution of the value of a tax exemption will be dependent upon the individual facts and circumstances of the taxpayer in the year the income is recognized. If a retiree has substantial deductions in the year the retirement benefits are received, not taking into account any exemption for retirement benefits, then a retiree may pay no

exemption does not “accrue” for purposes of art 9, § 24 as that term has been interpreted by *Studier*.

**2. Taxing Retirement Benefits Paid From A State  
Or Local Pension Plan Does Not Impair The  
Retirement Benefits**

Taxing a distribution from a pension plan of the State of Michigan or its political subdivisions does not impair the retirement benefit. The employee will still be paid his or her full retirement benefit. Only in a second step, after receipt of the retirement benefits, will the recipient’s retirement benefit potentially be subject to taxation. Const 1963, art 9, § 24 only protects the “right to receive certain *pension payments* upon retirement, based upon service performed.” *Kosa v State Treasurer*, 408 Mich 356, 371; 292 NW2d 452 (1980) (emphasis added). The retiree still receives the same pension benefit he or she earned under the pension plan. The retirement benefit may, but not necessarily would, be subject to tax only after payment. Eliminating a tax exemption for pension benefits paid under a state or local pension plan does not equate to a reduction of benefits. “Admittedly the net bankable retirement income might be the same whether the rate of a pension is reduced, or a tax is levied on such income. However, there is a definite legal distinction between reducing the rate of a pension and levying a tax upon the income received from that pension.” *Herrick v Lindley*, 391 NE2d 729, 733 (Ohio 1979). The income tax treatment of a retirement benefit is completely outside of the terms of the pension plan and, as *Herrick* recognized, the payment of the pension benefit as provided in the governing plan is not reduced by eliminating a tax exemption. For the reasons explained above, removing a tax exemption does not necessarily reduce the retirement benefit paid. In contrast,

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income tax on the receipt of the retirement benefits. That is, any tax liability is completely offset by the other deductions.



reducing the benefit level will decrease the retirement benefit paid. Therefore, 2011 PA 38 does not impair the accrued financial benefit of a pension plan of the State of Michigan or its political subdivisions.

**3. A Tax Exemption Cannot Be Annually Funded  
And, Therefore, Cannot Be A “Financial  
Benefit” For Purposes Of Const 1963, Art 9, § 24**

The second clause of art 9, § 24 further supports the conclusion that a tax exemption is not a “financial benefit.” That clause requires annual funding of “[f]inancial benefits arising on account of service rendered in each fiscal year.” “[T]he second paragraph of art 9, § 24 expressly mandates [the state and its political subdivisions] to fund all public employee pension systems to a level which includes unfunded accrued liabilities.” *Shelby Twp Police & Fire Retirement Bd v Shelby Twp*, 438 Mich 247, 255-56; 475 NW2d 249 (1991). Thus, the “financial benefits” earned each year must be funded in such year. Const 1963, art 9, § 24; *see also Shelby Twp*, 438 Mich. at 255-56.

In noting the interaction of the first and second paragraphs of Const 1963, art 9, § 24, this Court has stated:

Thus, because the second clause only requires the state and its political subdivisions to set aside funding for “[f]inancial benefits arising on account of service rendered in each fiscal year” to fulfill their contractual obligation of paying for “accrued financial benefits,” *it reasonably follows that “accrued” financial benefits consist only of those “[f]inancial benefits arising on account of service rendered in each fiscal year....”* [Studier, 472 Mich at 654-55 (emphasis added).]

If a tax exemption is a “financial benefit” – which it is not – it would necessarily follow that the benefit of the tax exemption must accrue each year an employee participates in a public pension plan. The second paragraph of Const 1963, art 9, § 24 would, consequently, require that

the value of the tax exemption be funded annually. *See Shelby Twp*, 438 Mich at 255-56. Not only is this not done in practice, it would be impossible to do so, for the following reasons.

First, there is a problem of *how* to fund a tax exemption. Funding requires a current monetary outlay, that is paid annually, see *Shelby Twp*, 438 Mich at 255-56. A tax exemption cannot be the subject of a current monetary payment. Rather, an exemption operates in the future by excluding an item of income from an individual taxpayer's taxable income.

The fact a tax exemption cannot be the subject of a current monetary payment means that there is no method available to currently fund the tax exemption. *Shelby Twp* recognizes that the second paragraph of Const 1963, art 9, § 24 requires current funding of the financial benefit. This supports the position that the ratifiers of the 1963 Constitution could not have intended that a tax exemption would constitute "financial benefits."

Second, funding a tax exemption would necessitate accurately calculating the *value* of the benefit provided by the exemption. That is, because Const 1963, art 9, § 24 requires current funding of the accrued financial benefit, public employers would be required to ascribe a monetary value to the tax exemption. *See Shelby Twp*, 438 Mich at 255-56; *see also Studier*, 472 Mich at 655. It is a fundamental tenet of tax law that tax liability is determined based on annual accounting, see *Burnet v Sanford & Brooks Co*, 282 US 359 (1931), which raises an inquiry with respect to the time when tax items are recognized based upon a taxpayer's individual facts and circumstances. The value of a tax exemption can only be determined in the tax year the underlying income is recognized. The year benefits are received, and recognized as income, occurs *after* the year or years during which services that give rise to the current funding requirement are rendered.

The value of the tax exemption depends on the amount of the retiree's retirement benefits, the amount of the retiree's deductions needed to calculate taxable income, and the tax rate. None of these can be determined while the employee is still working. Therefore, the value of a future tax exemption cannot be accurately determined in the year a state employee performs services. Accordingly, treating a tax exemption as an accrued financial benefit is inconsistent with Const 1963, art 9, § 24, which mandates that the value of the "financial benefit" be funded in the year the services are performed. *See Studier*, 427 Mich at 655; *Shelby Twp*, 438 Mich. at 255-56. Such a result could not have been the intent of the ratifiers of the Constitution.

**4. Const 1963, Art 9, § 2 Prohibits The State's  
Surrender Of Its Power Of Taxation And Must  
Be Reconciled With Const 1963, Art 9, § 24**

If the tax exemption for public retirement benefits cannot be eliminated or reduced, it would mean that, once granted, the exemption forever prohibits the Legislature from imposing a tax on such benefits. This result would contravene Const 1963, art 9, § 2, which states that "[t]he power of taxation shall never be surrendered, suspended or contracted away."

The prohibition on the state's surrender of its taxing power was first included in the Michigan Constitution of 1908, art 10, § 9. Prior to 1908, the state occasionally made contracts granting tax exemptions or special rates to railroads and similar entities, and these contracts were deemed binding on the legislature. *See, e.g., Bd of Sup'rs v Auditor Gen*, 65 Mich 408; 32 NW 651 (1887). *See also Manistee & NR Co v Comm'r of Railroads*, 118 Mich 349, 350-52; 76 NW 633 (1898). This Court noted that the reason for including this restriction in the Constitution was:

because in the early history of the State some corporations had been granted special rates of taxation, and these charter provisions were held to be contracts which could not be impaired by

subsequent action upon the part of the State; and municipalities, for the purpose of having industrial corporations located therein, were prone to attempt to exempt their property from taxation for a limited time on condition of their locating in the particular municipality. [*Harsha v City of Detroit*, 261 Mich 586, 596; 246 NW 849 (1933).]

Art 9, § 24 embraces the fundamental principle of American jurisprudence that one legislature cannot bind successive legislatures. See *Studier*, 472 Mich at 660. The power to tax is vested exclusively in the legislature. See Const 1963, art 9, § 1; see also *Harsha*, 261 Mich at 591. Constitutional provisions, such as those prohibiting the impairment of contracts -- e.g., art 9, § 24 and art 1, § 10 -- "cannot be construed to prohibit the exercise by the legislature of its constitutional powers." *Harsha*, 261 Mich at 594.

Moreover, all constitutional provisions enjoy equal dignity, and a fundamental rule of construction requires that every clause or section of a constitution be construed consistently to protect and guard its purposes. *Nat'l Pride at Work, Inc v Governor of Michigan*, 274 Mich App 147, 167; 732 NW2d 139 (2007). Thus, constitutional provisions relating to the same subject matter must be construed together. *People v Bartlz*, 212 Mich 580, 586; 180 NW 423 (1920).

By its plain terms, Const 1963, art 9, § 2 prohibits the state from surrendering the power of taxation by contract. Yet, this would be exactly the result if a tax exemption granted by a previous legislature is a "contractual obligation" which the Legislature may not undo. Such an interpretation would create an exception to the constitutional prohibition against surrendering the taxing power which is not set forth in the text of the Michigan Constitution.<sup>13</sup> Furthermore,

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<sup>13</sup> When the 1963 Michigan Constitution was adopted, one of the provisions was art 9, § 4, which grants a property tax exemption for religious and educational non-profit organizations for property owned and occupied by such organizations exclusively for religious or educational purposes. Thus, if the delegates had intended to grant a perpetual right to tax exemption for retirement benefits, would the delegates have included language expressly providing for a tax exemption, similar to Const 1963, art 9, § 4? Of

construing the term “accrued financial benefits” of art 9, § 24 to include a right to a tax exemption would operate to “prohibit the exercise by the legislature of its constitutional power [to tax].” *Harsha*, 261 Mich at 594. However, this Court has long acknowledged that such a construction “cannot” be made to prohibit the exercise by the Legislature of its constitutional power to tax. *Id.*

Therefore, for all the reasons noted above, the term “accrued financial benefits” as used in art 9, § 24 cannot encompass a right to a tax exemption upon payment of those benefits. *Id.*

**B. Question 2: Whether Reducing Or Eliminating The Statutory Tax Exemption For Pension Incomes, As Described In MCL 206.30, As Amended, Impairs A Contractual Obligation In Violation Of Const 1963, Art 1, § 10 Or The US Const, Art I, § 10(1)?**

The Michigan and federal constitutions each have a clause prohibiting a state from enacting a law which impairs contractual obligations. The Michigan Constitution provides that “[n]o ... law impairing the obligation of contract shall be enacted.” 1963 Const, art 1, § 10. The United States Constitution similarly provides that “[n]o State shall ... pass ... any Law impairing the Obligation of Contracts.” US Const, art I, § 10(1). For the reasons stated below, participants in retirement plans of the State of Michigan or its political subdivisions do not have a contractual right to a statutory tax exemption. Therefore, eliminating the statutory tax exemption does not impair any contractual right. *See Studier*, 472 Mich at 659-64.

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course it would be expected, because art 9, § 4 demonstrates that the delegates understood the type of language to use in order to grant a tax exemption.

**1. The Statutory Language Of The Tax Exemption  
For Retirement Benefits Paid From A State Or  
Local Pension Plan Does Not Express Any Intent  
To Create A Contractual Obligation**

“The act of one legislative body does not tie the hands of future legislatures.” *Le Roux v Secretary of State*, 465 Mich 594, 615-16; 640 NW2d 849 (2002) (quoting *Atlas v Wayne County*, 281 Mich 596, 599; 275 NW 507 (1937)). This Court has acknowledged that there are limited, narrow exceptions to the “fundamental principle of the jurisprudence of both the United States and this state ... that one legislature cannot bind the power of a successive legislature.” *Studier*, 472 Mich at 660-61. The limited exception can be implicated by the impairment of statutorily created contractual obligations. *See id.* However, “[a] necessary corollary of these limitations that has been developed by the United States Supreme Court, and followed by this Court, is the strong presumption that statutes do not create contractual rights.” *Id.*

This Court has directed that the “first step in this cautious procession” is to determine if a limited exception applies by examining the statutory language. *See Studier*, 472 Mich at 662. To find that a statute creates a contract, “the statutory language ‘must be plain and susceptible of no other reasonable construction than that the Legislature intended to be bound by a contract.’” *Id.* (quoting *In re Certified Question*, 447 Mich 765, 778; 527 NW2d 468 (1994)). “Before a statute, particularly one relating to taxation, should be held to be irrepealable or not subject to amendment, an intent not to repeal or amend must be so directly and unmistakably expressed as to leave no reason to doubt. Otherwise the intent is not plainly expressed.” *Harsha*, 261 Mich at 594.

This Court has identified language within a statute which may establish the Legislature’s intent to be bound to a contract. Such statutory language includes providing for the execution of

a written contract on behalf of the state or “use [of] terms typically associated with contractual relationships, such as ‘contract,’ ‘covenant,’ or ‘vested rights.’” *Studier*, 472 Mich at 663-64. In *Studier*, this Court found that the plain language of PSERA *did not* contain any language which established the Legislature’s intent to create a contractual obligation for public school employees to receive health care benefits. *See id.* at 664.

The statutes allowing for a tax exemption for retirement benefits paid under a pension plan of the State of Michigan or its political subdivisions must “leave no reason for doubt” that the tax exemption is irrevocable. *Harsha*, 261 Mich at 594. The statutory tax exemptions fail to meet this elevated standard. Neither MCL 206.30(1)(f), nor any of the other statutes governing exemptions for various types of pension plans, (see MCL 38.40, MCL 38.1346, MCL 38.1057 and MCL 38.705, (the “Michigan retirement statutes”)), use language indicative that the Legislature intended to establish a contractual right in retirees receiving retirement benefits under a pension plan of the State of Michigan or its political subdivisions to an income tax exemption. Similar to *Studier*, the statutory language establishing the tax exemption found in MCL 206.30(1)(f) and the Michigan retirement statutes does not provide for the execution of a written contract or include a covenant that the legislature will not amend the statutes. *See id.* at 664-65.

Similarly, there is nothing in the statutory language of MCL 206.30(1)(f) and the Michigan retirement statutes to the effect that persons receiving retirement benefits under state or local pension plan have “vested rights” to a tax exemption. *See id.* “*It is ... well established that a taxpayer does not have a vested right in a tax statute or in the continuance of any tax law.*” *Walker*, 445 Mich at 703 (emphasis added). Even if those receiving retirement benefits under the state’s retirement system could have a vested right to a tax exemption, to create a contractual obligation the legislature would have to use language expressly creating such a right in a manner

that “leaves no reason for doubt.” *Harsha*, 261 Mich at 594. “Had the Legislature intended to surrender its legislative powers through the creation of contractual rights, it would have expressly done so by employing such terms.” *Studier*, 472 Mich at 664. This, the Michigan Legislature has not done. Therefore, there is no vested or contractual right to the continuation of the tax exemption.

**2. Const 1963, Art 9, § 2 Prohibits The Legislature From Surrendering Its Power To Tax**

Even if this Court were to construe MCL 206.30(1)(f), MCL 38.40, MCL 38.1346, MCL 38.1057 and/or MCL 38.705 as creating a statutory contractual obligation, such a statutorily created contract would violate Const 1963, art 9, § 2. Const 1963, art 9, § 2 provides that “[t]he power of taxation shall never be surrendered, suspended or *contracted away*.” (emphasis added). As explained above, the purpose of art 9, § 2 was to expressly prevent exactly the result which would be achieved if MCL 206.30(1), MCL 38.40, MCL 38.1346, MCL 38.1057 and/or MCL 38.705 are construed to create a contractual obligation. *Harsha*, 261 Mich at 596.

**3. Six Other Jurisdictions With Statutory And Constitutional Provisions Similar To Michigan Have Routinely Concluded That Retirees Do Not A Have Contractual Right To A Statutory Tax Exemption For Retirement Benefits**

Courts in eight other jurisdictions have addressed the same question of whether a statutory tax exemption for public pension benefits establishes irrevocable contractual rights. Six jurisdictions – Colorado, Georgia, Maine, Montana, New Mexico and Ohio – have all concluded that retirees do not have a contractual right to a statutory tax exemption for retirement benefits paid under state retirement systems. These six jurisdictions have relied upon either of



two bases – both of which are applicable in Michigan – to conclude that retirees do not have a contractual right to a tax exemption. Three of the cases turned on constitutional provisions, similar to Const 1963, art 9, § 2, that prohibit the legislature from surrendering the power of taxation. The other three turned on whether the statutory language unambiguously and unmistakably established a legislative intent to create a contractual right to a tax exemption. The two jurisdictions which concluded that retirees receiving state retirement benefits had a contractual right to a tax exemption are distinguishable under well established Michigan constitutional principles.<sup>14</sup>

*Parrish v Employees Retirement Sys of Ga*, 398 SE2d 353 (Ga 1990) considered whether legislation that repealed a tax exemption for retirement benefits paid under Georgia retirement systems impaired a contractual obligation. *Parrish* acknowledged that the law exempting retirement benefits from state income tax was a term of state employees' employment contracts. *Id.* at 354. Even though the court construed the tax exemption as a term of the employment

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<sup>14</sup> *Hughes v Oregon*, 838 P2d 1018 (Ore 1992) is distinguishable from the question presented in this case because Oregon does not constitutionally restrict its legislature from contracting away the power to tax. *Hughes* also relied on several old U.S. Supreme Court decisions that found that a legislature could enter into a contract establishing a permanent right to a tax exemption. Michigan has rejected the line of reasoning of the U.S. Supreme Court decisions *Hughes* relied upon through the adoption of Const 1963, art 9, § 2 and its predecessor provision in the 1908 Constitution. See *Harsha*, 261 Mich at 596.

*Bailey v North Carolina*, 500 SE2d 54 (NC 1998) is also distinguishable because the court applied rules of interpretation that are at odds with the well-established principles of interpretation applied by this Court. This Court directs that the Legislature must include statutory language that includes "an intent not to repeal or amend ... so directly and unmistakably expressed as to leave no reason for doubt" in order to statutorily create a contractual obligation. *Harsha*, 261 Mich at 594; *Studier*, 472 Mich at 662. *Bailey* did not apply this same exacting standard.

Therefore, *Hughes* and *Bailey* are not only distinguishable based on the established rules of Michigan constitutional interpretation, but also contrary to the decisions reached in six other jurisdiction which have applied constitutional and interpretative rules similar to the Michigan rules.

contracts, repealing the exemption “is not an unconstitutional impairment of the retirees’ contracts with the State.” *Id.* at 355. There was no impairment of contract because the Georgia constitution, similar to Const 1963, art 9, § 2, prohibits its legislature from contracting away the power of taxation.<sup>15</sup> *Id.* at 354. Therefore, *Parrish* held that “the Georgia General Assembly has had no power to grant an irrevocable tax exemption.” *Id.*

The Maine Supreme Court also considered whether retirees receiving state retirement allowances had a contractual right to a tax exemption in *Blair v State Tax Assessor*, 485 A2d 957 (Me 1984). Similar to the Michigan retirement statutes, the Maine retirement system statute included a provision that provided the retirement allowances “shall be exempted from any state, county or municipal tax in the State [of Maine]....” *Id.* at 959. Maine subsequently enacted an income tax that did not exempt retirement allowances paid from a state retirement system. *Blair* found the enactment of the income tax implicitly repealed the tax exemption for retirement allowances. Retirees argued that a repeal of the tax exemption breached the terms of the retirement plan contract with the state. Maine, like Michigan, constitutionally prohibits the legislature from ever “surrender[ing] the power of taxation.” Me Const, art 9, § 9; *see also Blair*, 485 A2d at 960. Construing this constitutional provision, the Maine Supreme Court acknowledged that “[e]ven if we were to find the [tax] exemption to be a contractual right of state employment, the legislative grant of such a right would violate the Maine Constitution ....”

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<sup>15</sup> The terminology used in the Georgia constitutional provision prohibiting contracting away the power to tax differs slightly from Const 1963, art 9, § 2. Specifically, the Georgia Constitution provides that “[t]he state may not suspend or irrevocably give, grant, limit or restrain the right of taxation and all laws, grants, contracts and other acts to effect any of these purposes are null and void.” 1983 Ga Const, Art VII, Sec I. However, the purpose of both the Georgia constitutional provision and Const 1963, art 9, § 2 is identical. That is, to avoid limitations on the taxing power of the state. *See Parrish*, 398 SE2d at 354-55; *Harsha*, 261 Mich at 594.

*Blair*, 485 A2d at 960. Therefore, the repeal of the tax exemption did not unconstitutionally impair any contractual obligation. *Id.*

The Montana legislature repealed the tax exemption for retirement benefits paid through the state retirement system. Similar to Const 1963, art 9, § 2, the Montana constitution prohibits its legislature from surrendering or contracting away its power to tax. *See* Mont Const 1972, art VIII, § 2. Retirees receiving state retirement benefits argued that the repeal of the tax exemption impaired a contractual obligation. *Sheehy v Public Employees Retirement Div*, 864 P2d 762 (Mont 1993). *Sheehy* first held that the repeal of the tax exemption did not “deny or limit state retirees’ actual retirement benefits.” *Id.* at 766. *Sheehy* also found that the Montana constitutional provision prohibiting “the state from surrendering or contracting away the power to tax” was applicable. *Id.* Thus, “[u]nder that constitutional provision, the state cannot promise any group of taxpayers that it will never tax them.” *Id.* Accordingly, *Sheehy* “concluded that state employees retiring prior to the effective date [of the statute repealing the tax exemption] did not have a contractual right to continued exemption from taxation of their state retirement benefits.” *Id.* Thus, just as this Court acknowledged in *Harsha* that the Michigan Constitution “cannot be construed to prohibit the exercise by the legislature of its constitutional powers,” *Sheehy* construed a Montana constitutional provision similar to Const 1963, art 9, § 2 as preventing the Montana legislature from statutorily creating a contractual right to a tax exemption.

*Pierce v New Mexico*, 910 P2d 288 (NM 1995) considered whether recipients of state retirement benefits had a contractual right to an income tax exemption. The New Mexico legislature repealed its income tax exemption for state paid retirement benefits. Retirees challenged the repeal, asserting that they had a contractual right to the tax exemption. *Pierce*

concluded that the retirees had a vested right, but not a contractual right, to receive retirement benefits. Like Michigan, New Mexico statutes must “indicate a clear and unambiguous legislative intent to create irrevocable or vested tax exemptions” in order to find that the repeal impaired a contractual obligation. *Id.* at 226. *Pierce* found the tax exemption did not evidence a clear or unambiguous intent to create irrevocable or vested rights because the tax exemption was not set forth in the statutory provisions which created the substantive rights to retirement benefits. As a result, the repeal of the tax exemption did not impair a contractual obligation. Applying rules of interpretation similar to those used in *Harsha* and *Studier*, and construing a statutory framework similar to MCL 206.30(1)(f) and the Michigan retirement statutes, *Pierce* found that state retirees did not have a contractual right to a tax exemption for retirement benefits and, thus, there was no impairment of any contractual obligation.

*Herrick* also provides persuasive guidance. Similar to the Michigan statutes establishing state retirement systems, the Ohio retirement system included a statutory provision that exempted retirement benefits from the Ohio income tax. The Ohio legislature repealed the tax exemption. The retirees argued that the tax exemption was a valuable benefit to which they had vested rights. The retirees argued that a repeal of the tax exemption impaired a contractual right. The Ohio Supreme Court applied the same constitutional principle of interpretation used in *Harsha* and *Studier* to determine if retirees had a vested right to the continuation of the tax exemption: “every reasonable doubt should be resolved against such an impairment [of the government’s power to tax].” *Herrick*, 391 NE2d at 733. Similar to MCL 206.30(1)(f) and the Michigan retirement statutes, the Ohio statute at issue in *Herrick* did “not prohibit the imposition of a tax.” *Id.* Thus, *Herrick* held that if the legislature had intended to vest contractual rights in participants in state retirement plans, the legislature could have provided appropriate language in

the statutes providing for the tax exemption. *See id.* Accordingly, *Herrick* found that repealing the tax exemption did not impair a contractual obligation.

The Colorado Court of Appeals also held that the recipients of state disability benefits did not have a vested right to a tax exemption because the language of the underlying statute did not express the intent to create a contractual entitlement. *Spradling v Colorado Dep't of Revenue*, 870 P2d 521, 524 (Colo Ct App 1993). The tax exemption at issue simply allowed for the subtraction of state pension benefits from adjusted gross income to arrive at Colorado taxable income. *See id.* *Spradling* specifically rejected the conclusion reached in *Hughes v Oregon*, 838 P2d 1018 (Ore 1992) and found the Ohio Supreme Court's decision in *Herrick* to be persuasive. *Id.* Thus, *Spradling* applied rules of interpretation consistent with the rules of this Court.

The six jurisdictions that have found that a repeal of a tax exemption for state retirement benefits does not unconstitutionally impair contractual obligations have applied two rules: first, courts have relied on state constitutional provisions that prohibit surrendering of the power to tax; and, second, courts have applied rules of interpretation that require the statutory language to expressly create contractual obligations. Michigan has adopted both of these rules. *See* Const 1963, art 9, § 2; *Studier*, 472 Mich at 662. Thus, the decisions from Colorado, Georgia, Maine, Montana, New Mexico, and Ohio directly support the constitutionality of the reductions in the pension tax exemptions here.

C. **Question 3: Whether Determining Eligibility For Income-Tax Exemptions On The Basis Of Total Household Resources, Or Age And Total Household Resources, As Described In MCL 206.30(7) And (9), As Amended, Creates A Graduated Income Tax In Violation Of Const 1963, Art 9, § 7?**

Amicus curiae adopt the answer to question 3 provided by the Attorney General in Support of Validity of 2011 PA 38 (filed August 10, 2011) and by Amicus Curiae Business Leaders of Michigan, et al.

D. **Question 4: Whether Determining Eligibility For Income-Tax Exemptions On The Basis Of Date Of Birth, As Described In MCL 206.30(9), As Amended, Violates Equal Protection Of The Law Under Const 1963, Art 1, § 2, Or The Fourteenth Amendment Of The United States Constitution?**

Amicus curiae adopt the answer to question 4 provided by the Attorney General in Support of Validity of 2011 PA 38 (filed August 10, 2011) and by Amicus Curiae Business Leaders of Michigan, et al.

**V. RELIEF REQUESTED**

The Amici Curiae respectfully request that this Court uphold the constitutionality of 2011 Public Act 38 with respect to each of the questions submitted for an advisory opinion.

Respectfully submitted,

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